Supreme Court, U.S.
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No. 03-684

IN THE
Supreme Court of the United States

ABOLALA SOUDAVAR,

Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN AND
SAZMANE GOSTARESH VA NOWSAZI-E IRAN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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INTRODUCTION

This *pro se* petition is a companion to another *pro se* petition filed simultaneously by the petitioner ("Soudavar") in No. 03-685. The jurisdictional questions raised in both petitions are identical, *viz.*, whether the district court lacked competence to adjudicate Soudavar's claims against Iran for the taking of his property. The instant petition concerns Iran's taking of petitioner's shares in an Iranian company. The petition in No. 03-685 concerns the taking of parcels of land. Both cases were dismissed for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act ("FSIA") and under the Treaty of Amity with Iran. The facts in the instant petition differ from those in the companion petition only in one respect: Soudavar's rejection of Iran's offer to pay compensation for the nationalized KIG shares.

This litigation has a long and arduous history, due in large measure to Soudavar's lack of familiarity with American law, his disregard of the principle of issue preclusion and his penchant for filing consecutive *pro se* suits.

STATEMENT

Soudavar is an Iranian national and a resident of Houston, Texas. In 1988 he instituted the first suit against the Islamic Republic of Iran ("Iran") and one of its agencies ("Sazmane") in federal court in Houston. The complaint sought compensation for the taking of his shares of stock in an Iranian enterprise, the Khawar Industrial Group ("KIG"). He asserted subject matter jurisdiction under the Foreign Sovereign Immunities Act's ("FSIA") commercial activities exception to immunity, 28 U.S.C. §1605(a)(2), and under the Treaty of Amity with Iran.[1] Although the

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[1] Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran. June 6, 1957, 8 U.S.T 899, T.I.A.S. No. 3853.

Iranian law under which his shares were taken made provision for compensating former shareholders, Iran had made no offer of compensation at the time Soudavar instituted the Houston action. The Fifth Circuit vacated an improper dismissal by the district court and dismissed the suit for lack of subject matter jurisdiction under the FSIA and under the treaty.[2] This Court denied certiorari.

During the pendency of Soudavar's suit in Houston, Iran offered to former shareholders in KIG compensation under a formula that was accepted by members of Soudavar's immediate family, including his mother, sister, and eventually his son (who had been a co-plaintiff in the Houston action). Soudavar declined the offer; he considered the offered compensation to be substantially less than the compensation that Iran paid to American claimants in the Iran/United States Claims Tribunal in The Hague. He felt that he could secure a more favorable recovery by suing Iran in the a United States.

In July 2000 Soudavar instituted the instant action against Iran and Sazmane, once again seeking compensation for the value of his shares in the KIG enterprise.[3] He again sought to invoke the district court's jurisdiction under the FSIA's commercial exception to sovereign immunity, 28 U. S. C. §1605(a)(2), and under the Treaty of Amity. The district court dismissed the suit on collateral estoppel grounds since the absence of subject matter jurisdiction under the FSIA and under the Treaty had been established conclusively by the Fifth Circuit (Pet. App. B, at 6). The court of appeals affirmed the dismissal in a brief per curiam judgment on the ground that the

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[2] *Soudavar v. Islamic Republic of Iran*, 186 F.3d 671 (5th Cir.), *cert. denied*, 528 U.S. 1187 (1999).

[3] At the same time he filed a second action which is the subject of the petition in No. 03-684.

district court lacked subject matter jurisdiction under any of the bases invoked by Soudavar (Pet. App. A at 2).

Soudavar contends that the core of his grievance in the present suit is not Iran's taking of his KIG shares (which he acknowledged was the basis of his earlier suit in the Fifth Circuit), but rather the inadequate settlement offered to him by Iran. Citing *Republic of Argentina v. Weltover*, 504 U.S. 607 (1992), he argues that the unsatisfactory compensation offer that was communicated to him in 1999 in the United States brought about the requisite "direct effect" in this country because he is a resident of the United States. The contention is misguided. Unlike in *Weltover*, where Argentina breached a contractual obligation to make payment in dollars in New York, here Iran merely extended an offer of compensation that Soudavar rejected. Soudavar does not suggest that Iran intended to pay the offered compensation in the United States. It is manifest that Soudavar can derive no comfort from the *Weltover* Court's decision.

Soudavar contends in the alternative that there was a "direct effect" in the United States because as a result of Iran's inadequate offer he was deprived of income in this country and the United States Treasury lost tax revenues. The argument is plainly frivolous, since Iran's offer did not constitute a legal commitment to pay compensation in the United States.

REASONS FOR DENYING THE WRIT

The court of appeals correctly held that Soudavar's claim for compensation was not cognizable under the "direct effect" clause of the commercial activity exception to sovereign immunity, 28 U.S.C.§ 1605(a)(2), and under the Treaty of Amity; as noted, Iran had assumed no obligation to pay compensation in the United States. *Weltover* established firmly that a nonpayment of an indebtedness by a foreign state causes a "direct effect" in the United States

only if the debtor state is legally obligated to make the payment in the United States. Moreover, a state's payment of compensation for nationalized property is plainly a sovereign and not a commercial act that falls within the FSIA's commercial exception to sovereign immunity. For these reasons, Soudavar's renewed attempt to vest subject matter jurisdiction under the FSIA was futile.

The court of appeals further found that Soudavar's insistence that the Treaty of Amity provided an alternate jurisdictional basis for his suit was without substance. In the last four years two different circuit courts of appeals – the Fifth Circuit in its earlier decision and the court of appeals below (Pet. App. A at p. 2) – considered treaty argument and found it wanting.

Rather than repeat our response to Soudavar's treaty argument, we respectfully refer the Court to our opposition brief in No. 03-685, at 3-4, where the treaty issue is addressed.

CONCLUSION

In ruling that the FSIA and of the Treaty of Amity did not provide subject matter jurisdiction for Soudavar's compensation claim against Iran the court of appeals followed settled precedent. Its affirmance of the district court's dismissal of the suit was correct as a matter of law. Soudavar's instant petition presents no occasion for further review by this Court and should, therefore, be denied.

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Respectfully submitted,

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